



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/642,221	08/18/2000	Ryukou Arisawa	32892	6271

116 .7590 02/13/2004

PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

EXAMINER

APPIAH, CHARLES NANA

ART UNIT	PAPER NUMBER
----------	--------------

2686

DATE MAILED: 02/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/642,221

Applicant(s)

ARISAWA ET AL.

Examiner

Charles Appiah

Art Unit

2686

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on November 24, 2003 (Paper #10) have been fully considered but they are not persuasive.

In response to Applicants' argument that neither Kurakake nor Hsu teaches or suggests "a downloading means which downloads an application software corresponding to a music data format defined in connection with music data selected by a user", examiner respectfully disagrees and asserts that Kurakake's teaching of connecting the music to music data processing apparatus to a network to download programs and data from a remote storage of the host computer (see col. 3, lines 30-60) as well the controller operating when the interface establishes the communication with the host computer for downloading the new version from the remote storage of the host computer leading to a command (as inputted inherently by a user) to selectively execute the various application programs (see col. 4, lines 3-37), clearly shows the user making a selection relating to the various applications to treat the music data and as downloaded, and as such the combination of Kurakake and Hsu still meet Applicants' invention as claimed.

In view of the above the rejections using Kurakake and Hsu are maintained and made FINAL.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Art Unit: 2686

3. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Kurakake (5,900,564)** in view of **Hsu et al. (6,587,684)**.

Regarding claim 1, Kurakake discloses a music data apparatus comprising: a music data retrieving means, which retrieves music data (see col. 5, lines 5-39), and a downloading means which downloads an application software corresponding to a music data defined in connection with the music data from a remote server in response to a user selection (see col. 4, lines 17-37). Kurakake shows a communication interface, which is activated for communicating with a host station in a network (see Fig. 1) for downloading music to a local storage on the terminal apparatus (see col. 4, lines 38-61), but fails to explicitly teach the apparatus being a portable cellular telephone.

Hsu discloses a system for downloading software related to digital telephone services using a client browser to a digital portable wireless telephone (see Fig. 2, col. 3, line 55 to col. 4, line 40). According to Hsu the digital telephone initiates a data call for the transmission of data by execution of a client browser routine, which generates the message based on user inputs, and using protocols such as TCP/IP an addressed server downloads a requested software to the digital telephone (see col. 11, line 51 to col. 12, line 52).

It would therefore have been obvious to one of ordinary skill in the art to implement the music data processing apparatus of Kurakake Hsu's digital cellular telephone for the benefit of enabling a user to select and control the wireless upgrading of software in a user's telephone for the activation of new services or the enhancement of existing services as taught by Hsu.

Regarding claim 2, the combination of Kurakake and Hsu would inherently show that the retrieving means retrieves the music data from a storage medium as taught by Kurakake (see col. 4, lines 3-30).

Regarding claim 3, Kurakake shows the retrieving means retrieves the music data via a communication means (see Fig. 1, link between 107 and network 120).

Regarding claim 4, the combination of Kurakake and Hsu would further show an application software executing means which executes the application software in association with the music data in the cellular telephone as taught by Kurakake (see col. 9, line 66 to col. 10, line 21, col. 11, lines 38-42).

Regarding claim 5, Kurakake's teaching of selectively executing the various application programs to treat the music data based on the downloaded new version (see col. 11, lines 42-64) reads on the application software executing means executes a plurality of pieces of application software in parallel simultaneously in association with the music data.

Claim 6, which recites the method steps for implementing the features of the portable telephone of claim 1 is rejected for the same reasons as set forth in the rejection of claim 1 above.

Regarding claim 7, the combination of Kurakake and Hsu would meet the feature of the downloading means download the application software via a wireless communication means, as taught by Hsu (see Fig. 1).

Claims 8-10 are rejected for the same reasons as set forth in the rejection of claims 1-5 above.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Sparks et al. (6,222,838) discloses a system for delivering audio and data files.

Janky et al. (6,549,942) discloses a system for enhanced delivery of audio data based on user selection.

Drosset et al. (6,662,231) discloses a method for subscriber based audio service over a communication network

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Appiah whose telephone number is 703 305-4772. The examiner can normally be reached on M-F 7:30AM-5:00PM.

Art Unit: 2686

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703 305-4379. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CA


CHARLES APPIAH
PRIMARY EXAMINER